O/Merchant Shipping/43

1943

File No.

Legal Department

A **BRANCH**

Subject:—

Opinions Under the

Indian Merchant Shipping Act,

1923

P.4
E

O/ Merchant Shipping/43

File No.

Gen. 194 e.

314-A

C O N T E N .

Legal Department File No. O. Merchant Shipping /1943

Sr. No.	R.I./	O.No.	Subject	
			Opinions under the Indian Merchant Shipping Act, 1923.	
1.	R.I. No. 5176 22.4.43	O.N. 3904 31.5.43	Legal implication of the term "tidal waters"	1-4

P.H. 14/8

N.C.B. 14/8

Submitted.

2. The Government of Bombay have implemented certain of the recommendations of the Report of the Tapti River Boating Tragedy Committee published in G.R.P. & S.D. No. 2266/34, dated 29th June 1933, by amending the Bombay Ferries Act, 1868, by Bom.Act.XXI of 1942. As Government of India was concerned with the Committee's recommendations so far as the tidal waters are concerned, the Principal Officer, M.M.D. was requested to offer his remarks on the question of the control and licensing of boats on tidal waters. The Principal Officer refers to definitions of the terms "tidal water" and "harbour" in section 742 of the Merchant Shipping Act, 1894, and states that tidal waters are outside the limits of rivers or estuaries and, therefore, they may be taken as meaning waters outside inland water limits. The P.&.S.D. has referred the papers to R.L.A. to know exactly what the legal implications of the term "tidal waters" are.

3. The expression "Tidal Waters" is not defined in the Indian Merchants Shipping Act, 1923. The words "merchant Shipping Act" means the Merchant Shipping Acts, 1894-1932. The Merchant Shipping Act, 1894 (57 and 58 Vict. C.60) applies to India (cf. Collection of Statute relating to India Vol. II p.108). Attention is invited to sections 91, 264, 368, 509, 712, 735, and 736 of the Merchant Shipping Act, 1894 (57 and 58 Vict c. 60) by which Parts I, II, III, VIII, and certain other sections are made applicable to His Majesty's dominions. The expression "Tidal water" as defined in section 742 of this Act means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides and not being a harbour. "Harbour" as defined in this section includes harbours properly so called, whether natural or artifical, estuarises, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter or ship and unship goods or passengers. It would therefore appear that estuaries and navigable river which are included in the term "harbour"

P.T.O

are exlued from the definition of the expression "tidal water."

3. Maritime shipping and navigation, including shipping and navigation on tidal waters' is a centrayl suhject under entry 21 in list I inthe Seventh Schedule to the Government of India Act, 1935. It appears therefore that shipping on tidal waters can opiy be regulated by the Central Government. "Shipping and navigation on inland waterways as regards mechanicapply propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on inland waterways,"is a concurrent subject under entry 32 in List III and therefore the Provincial Government is competent to legislate in respect of control and licensing of boats on "inland waters". "Inland Water" as defined in section 2(2)of the Inaland Steam-Vessels Act, 1917, mens any canal, river, lake or other naviqable water in British India. It appears therefore that so far as control and licensing of boats on any canal, river, lake or other navigable water in the province of Bombay is concerned, the Provincial Government is competent to legislate Since, as pointed out in para. 3 above, the tidal waters are outside the limits of navigable rivers and estuaries they may be taken as outside the inland water limits as defined in section 2(2)of the Indian Steam Vessels Act, 1917, The view taken by the Principal Offiicer M.M. Department, in para. 1 of the his endorsement at p. 19 ante, appears to be correct.

Sd/- P.S.Nadkarni.
8-5

P.A.

The P.& S.D. wants to know exactly what the legal implications of the expression "tidal waters" are.

2. The expression "tidal water" has not been defined in the Indian Merchant Shipping Act, 1923. This expression, is, however, defined in some of the English Acts.

1-7-56

Office of the R.L.A.

The common notion of tidal waters is any part of the sea or any part of a river within the ebb and flow of the tide. The term has been defined in several English statutes. Please see The Merchant Shipping Act 1 894, Section 742; the Salmon Fisheries Act, 24 and 25 Vc.109,section 4, Railway Companies Act 1863 Section 3, the Explosives Act 1875 section 108. The definitions in the last three statutes abovementicnmed conform more or less to the common notion. e.g. in the explosivies Act tidal water is defined as any part of the sea or of a river within the ebb and flow of the tide at ordinary spring tides. The definition in the Merchant Shipping Act 1894, is farthest removed from the common notion inasmuch as for the purpose of the Act large areas of tidal rivers and estuaries ~~estuaries~~ are excluded from the definition. It is unnecessary in the present reference to consider whether the Principl Officer, Mercantile Marine Department is correct in his surmise that definition exludes the whole of the tidal areas of rivers and estuaries. The point is that Government need not consider itself bound by the definition in the Merchant Shipping Act unless the provisions of that Act are now in question. It is not clear from the notes in connection with what decision or action a definition of tidal waters is required.

ID/- R.S.H.

Remembrancer of Legal Affairs

M.R.D.
7-7-56
C.4

U.R. to P. & S.D. No. 3904 dated the 31st May 1943.